not deceived. They must be themselves trusted with the whole extent of the evil and danger. If any part, however small, is kept back, and is afterwards discovered, they at once imagine that the half is not told them.

Whether it will ever be possible to guard so effectually against the causes of the yellow fever as to prevent its recurrence among us, cannot be determined. We have the more reason for earnestly desiring to do this, since the cold of our winters removes the partial protection which might otherwise be derived to the inhabitants of the exposed places from becoming accustomed to its atmosphere. These places, however, have hitherto been confined to so narrow limits, and the periods are so unfrequent when even these are affected, that we cannot but hope to find means of eradicating the power of producing the fatal poison.

ART. XXI.—*Trial of Stephen and Jesse Boorn, for the murder of Russell Colvin, before an adjourned term of the Supreme Court of Vermont, begun, &c. Oct. 26, A. D. 1819; to which is subjoined the particulars of the wonderful discovery thereafter of the said Colvin's being alive, &c.* Rutland, pp. 32.

THE mysterious circumstances of this case have made it the subject of much public attention. It will be one more added to the examples of erroneous convictions founded on circumstantial evidence; and wherever its fame may reach, it will probably be urged, in all future trials, as an argument for obstinate and undistinguishing scepticism. Such instances are unfortunate, for they tend to diminish our trust in the judicial investigations of crime, and thus increase the chance of escape to actual offenders. When we see men convicted, as were the Boorns, partly on their own confessions, for the supposed murder of one who still lived, and had passed several years at no great distance from the place of trial, we are ready to think, that there are no safe and adequate means of detecting the crimes, which no human eye beholds; and that in all capital convictions, there is the greatest danger of involving the innocent in the fate of the guilty. Yet, when we consider how rare have been the instances, in which deliberate convictions upon competent testimony have fallen upon the guiltless, we shall find reason to conclude, that cas-

ual exceptions ought not to shake our confidence in the general rules of evidence. Mistakes, it is true, may now and then be made. But it ought to be remembered, that positive testimony will deceive at least as often as circumstantial proof; and that the errors and frauds of witnesses are not less to be guarded against, than the imperfections of human reason, in estimating the weight of probabilities.

Great indeed should be the caution, when the life of the accused is to pay the forfeit of his guilt. But we ought not to demand that degree of certainty, which is not often to be expected in human affairs. To require it in the administration of criminal justice would be to dissolve society, and leave all crimes without restraint. 'If courts of justice were never to inflict punishment, where there was a possibility of the accused being innocent, no punishment would in any case be inflicted.' These are the words of that most zealous advocate of mild laws, Sir S. Romilly. The civilians hold a similar language, and even in capital cases allow to circumstances clearly indicating guilt all the effects of the fullest proof. The Judge, says Huber, may consider the crime to be sufficiently established,—'quando circumstantiæ factum immediatè præcedentes et consequentes ita reum premunt, ut tametsi corpus ipsum facti non extet probatum, sic tamen undique conclusum et coarctatum est, ut ab alio quam a reo perpetratum esse nequeat; certitudine tamen morali, non physica, quæ scilicet ejusmodi sit, ut contrarium planè sit impossibile.' (*Prælect. lib.* xxii, *tit.* 3.)

Yet in the civil, as well as in the common law, the rule is, 'præstare sontem dimitti, quam innocentem damnari.'

It has been urged, that circumstantial evidence is liable to a double uncertainty; first, to all the danger of falsehood in witnesses; and secondly, to all the mistakes that may be made in reasoning upon and comparing the circumstances supposed to be proved. But there is a fallacy in this. It is hardly possible for any human ingenuity to contrive a series of feigned circumstances, which will agree perfectly with one another, and with other circumstances. It requires a foresight and vigilance, for which few minds are competent. And most commonly, the best compacted edifices of falsehood are crumbled into dust at the touch of some stubborn truth, which the builder entirely overlooked. Besides, when different facts, testified to by different witnesses, form a connected chain, and

when every new discovery falls easily in, and connects itself with what was before known, there remains hardly a possibility of imposture. A variety of circumstances, then, all concurring to fix the guilt upon the person accused, is a surer basis of conviction, than any declaration of a witness, however positive, to the actual perpetration of the crime, unless that declaration be itself confirmed by collateral evidence. It will happen in most cases, that the circumstances are proved by many witnesses, to whom no suspicion of mistake or fraud can attach; by disinterested spectators, or by those, whose duty has called them to the scene. The slightest falsehood would be instantly detected and exposed. The secrecy which envelops the crime cannot extend to many previous and subsequent facts, which, though not necessarily connected with it, may confirm or refute the allegations of the accuser or accused. An example perhaps may best illustrate our meaning. Huber (*Prælect. lib.* xxii, *tit.* 3, *n.* 4,) states the case of one Castello, who, after residing for some time at Harlingen, went out at midnight from his lodgings on a night in which a house in that city was entered through the windows, and a large sum of silver money was stolen and carried away. This man with a chest and a crowded portmanteau went early in the morning into a passage boat, and there remained for an entire hour before the usual time of departure, which he had not been known to do before, his practice having been, if he happened to arrive before the time, to stay at the inn. He now sat with his face muffled, and, contrary to custom, kept near to his chest and portmanteau. During the passage, he was anxious, and so repeatedly inquired, how soon they should reach Lewarden, as to be troublesome to the sailors. If any one touched his portmanteau, he was impatient, and sharply forbade him. Having gone from Lewarden to Workum, he was there arrested with all the money stolen that night. When questioned how he came by the money, he answered that it was given to him by a Frenchman at Lewarden. Now here is no positive evidence of Castello's having committed the crime; but there are circumstances, both before and after the robbery, all of them such as must have been known to many persons, far more satisfactory than the unsupported testimony of one or two witnesses, that they saw him enter the house, and come from it again with the money.

Cicero relates a case in which the conclusion drawn from a single circumstance saved two young men from a most ignominious condemnation. 'Cloelius, a man of some note, retired to rest in the same chamber with two youths, his sons, and was found in the morning murdered. There was no one, whether bond or free, that with the least reason could be suspected of the crime; and the two sons, though they lay so near, declared that they had perceived nothing. They were accordingly accused of parricide. What then? The transaction was suspicious. Was it to be believed, that neither of them knew what happened? Was it probable, that any one dared to enter the chamber at a time, when there were in it two young men, sons of the person intended to be murdered, who were able both to discover the attempt, and to defend him? There was besides no one else, that could be suspected. Yet, when it was clearly shown, that the young men, on the opening of the door, were found fast asleep; they were acquitted, and discharged from all suspicion; for it was thought impossible, that any one could commit a crime so unnatural and cruel and immediately sleep; but that a man thus atrociously guilty would not only be unable to rest in quiet, but even to breathe without fear.' These examples show the importance of circumstances in the discovery of truth. And it ought not to be forgotten, that circumstances are often the only safeguard of the innocent against malicous accusation.

But to remove as far as possible the danger of mistake, various limitations and restrictions have been adopted which experience has proved to be of great utility, in guarding the mind from a too ready acquiescence in proof of this nature. It is probable, that in most of the remarkable examples so often quoted, could the circumstances be fully known, it would appear, that some one of these rules had been violated. We shall not attempt to enumerate these salutary principles of evidence. The judicious caution of Lord Hale, however, is too applicable to the case of the Boorns to be omitted. 'I would never,' says he, 'convict any person of murder, or manslaughter, unless the fact were proved to be done, or at least the body found.' This also is the rule of the civil law. 'Ante omnia enim de corpore delicti constare, et inquiri debet.'* Had this rule been strictly adhered to, it is probable

* *Van Leeuwen. Cens. For.*

that the mistake in this case would not have happened. The same remark will apply to some of the other cases of conviction of the innocent, which are so often urged against circumstantial evidence.

The *motive* is another ingredient in the composition of crime, the presence or absence of which ought to have great influence in determining the weight, which should be given to collateral facts. 'Neminen ne minimum quidem maleficium sine causa admittere'* is the counsel of experience and common sense. No man was ever wicked merely for the sake of being so. If then, upon a diligent examination of the case, there appears no inducement for the party accused to commit the deed, and no probability of its being the effect of a sudden passion, the strongest and most complete evidence should be required to produce conviction.

From the very imperfect report of the trial of the Boorns, which is now before us, it would seem, that their conviction was grounded chiefly on their voluntary confessions. One of these confessions was testified to by one, who slept in the same room with Jesse Boorn in prison. It was said to have been made in the night, when Jesse awoke, appeared much disturbed, and made the disclosure. The other confession was in writing, and was rejected by the court, but afterwards called for by the prisoners' counsel, to explain the oral testimony of a witness, who related a subsequent conversation of Stephen Boorn with him. Both these disclosures describe minutely the manner of the death, and the disposal of the body; its being buried, and the remains twice removed; and various other particulars of the transaction. There are differences between them, and it is probable that Jesse's confession was made with the purpose of screening himself and casting the guilt on his brother, and that Stephen's, which was made afterwards, was designed to save them all from the punishment of death, and to substitute that of manslaughter. That some promises and inducements were held out to obtain written confessions, was proved; and persuasion at least had been used, before the other was made.

It is, doubtless, a very common opinion that the confession of the party accused is the highest species of proof. 'Out of thine own mouth will I judge thee,' is the process which most men prefer to all others. There is something gratify-

* Cic. pro Sex. Ros. Amer. c. 26.

ing in the thought of making the party become his own accuser, and leaving to his judges only the office of pronouncing sentence. It takes, as it is supposed, all the responsibility from the ministers of justice, and puts a stop to all complaint. But this is far from being the light in which confessions ought to be regarded by the tribunals for the prosecution of crimes. A judicial confession, made and persisted in understandingly and soberly before a competent judge, is indeed conclusive. But an extrajudicial and voluntary avowal of guilt is ever received with great caution, and is entirely open to contradiction or explanation. It furnishes evidence against the accused in proportion to the fairness and deliberation with which it is made, and no farther. It must be the voluntary act of the prisoner, unmoved by promises or threats; and great allowance is always to be made for the state of mind produced by the situation in which he is placed. It is to be scrutinized with the especial view to guard courts and judges against being made instruments of self-murder; for instances have occurred not unfrequently of crimes actually committed or falsely avowed with this horrible design. 'The confession of a criminal,' says Eden,* 'when taken even before a magistrate, can rarely be turned against him without perverting the end for which he must be supposed to have made it. Besides we have known instances of murder avowed, which never were committed; of things confessed to have been stolen, which never had quitted the possession of the owner.'

Non auditur perire volens is therefore the maxim of the law. Even the plea of *guilty* is never recorded, till after repeated warnings and admonitions, and an inquisition into the prisoner's state of mind.

In France, before the revolution, an extrajudicial confession was regarded only as inchoate or initiatory proof, and was not alone sufficient to convict. It might be enough, if supported by other proof, to subject the party to the *question* or torture, as long as that horrible mode of discovering crimes was practised; but even the avowal made under torture might afterwards be revoked without incurring additional guilt, 'it being presumed that the violence of the pain may have made the accused declare what was not true.' And by that law, a confession to be used against the person making

* Penal Laws, 167.

it, 'must be made freely by a person competent to make it, must be certain and determinate, and must concern a fact not evidently false.'

There is the greatest reason for this cautious reception of the confessions of criminals, for it is proved by many melancholy instances, that such confessions often proceed from fear, melancholy, disgust of life, or other causes, which disturb and delude the imagination. How common and how absurd were confessions of sorcery in former times! The condemnations for this crime, which took place in New England in 1692, are well known to have been generally preceded by acknowledgments of the persons accused. Many recanted, but so strong was the popular delusion, that others died confessed sorcerers.* Nor has this folly been confined to our own country, or to those times. 'Nothing,' says Eden, 'was more common in the beginning of the last century, than confessions of witchcraft.' Sir James Melville mentions several instances in the prosecution of Earl Bothwell; and though rather a sceptical man, was candid enough to believe them. The poor women were accordingly burnt, and posterity was furnished with a very accurate description of the devil, who is said to have appeared 'in a black gown, with a black hat on his head, in the attitude of preaching.'

France too shared in this delusion. The case of Magdeleine de la Palud, which occurred in 1653, may be selected for its singular interest. This unfortunate lady, it seems, having been left with an abundant patrimony, and possessed of a rare beauty, devoted herself to acts of piety, and of the most zealous charity. She erected a chapel on her estate, and furnished it with the most precious relics. Her devotion was constant, and had all the marks of unfeigned sincerity. She visited and relieved the sick for many miles around her; went to all the neighbouring villages and instituted schools in them for the instruction of the young; she herself was unwearied in giving lessons of piety and virtue to the poor, and relieving their wants by her personal attention. There was no act of christian sympathy, which she did not habitually practise; no virtue, which was not displayed in her life; no self-denial, which seemed too great for her benevolent zeal. If any one might hope to be universally loved and admired, it seemed to be Magdeleine de la Palud. But a peasant girl

* See Hutchinson's Hist. vol. ii, p. 39.

passing her chapel heard her mutter some unintelligible words; she attempted to sprinkle herself with the consecrated water, and she felt an invisible hand repel her from the basin. Instantly she was seized with such feebleness as hardly to permit her to walk. She was afflicted with strange disorders, and frequent convulsions. The most learned physicians were requested to examine and report upon her case; and after many visits and consultations, they decided that the peasant girl was possessed by an evil demon. The girl's declaration pointed out Magdeleine as the author of the mischief. It was currently believed, that this lady had been espoused by Gaufridy, who a little time before had been clearly proved to be an evil spirit, and was called the Prince. She was arrested, imprisoned, interrogated; her chapel searched and all her effects seized; and a process instituted against her as a witch. She confessed, 'that she had been possessed of a demon, but declared that it was without her consent, and that no mark had ever been impressed upon her person.' At another examination, 'she admitted, that an angel dressed in white and red had conversed with her; and she could not tell but he might have been a bad angel, who had transformed himself into an angel of light.' It was in vain that Magdeleine alleged her piety and her alms; in vain that she appealed to the unspotted purity of her life. These acts, which under other circumstances would have procured her the honours of a saint, now caused her to be treated as a hypocrite. She was pursued with a more furious zeal on account of the cloak of sanctity under which it was supposed she had attempted to hide her diabolical practices. She was finally sentenced 'to be and remain shut up within four walls, there to pass the remainder of her days.'

The epidemic of witchcraft is not likely to recur, but the same dread of popular resentment may still in some cases induce suspected persons to acknowledge crimes of which they were never guilty.

Nor is it only when there is some strong and general persuasion of plots or sorcery, of conspiracies among evil men or evil spirits, that accused persons are driven to the madness of bearing false witness against themselves—'suo se confessione ultro jugulantes.' History furnishes us with many other cases. The few we shall produce are from the writers of the civil law.

'Nor are examples wanting,' says Van Leeuwen,* 'of innocent persons rashly condemned on their mere confession, whose innocence has afterwards been made manifet. Such an instance is recorded by Annæus Robertus (Rer. Jud. lib. 1. cap. 4.) in the case of a countryman. A widow woman, who had for a long time been absent from her home, without being seen or heard of in the neighbourhood, was commonly believed to have been murdered by some ruffian, and the body concealed. Just at this time the countryman was found by the magistrate in his search after the murderer lurking in a marsh, and trembling with amazement and fear. He was arrested on suspicion, dragged before the judges, and without any terror of *the question*, or any anguish of torture, but either from despair, or else from a carelessness of his safety and a willingness to perish, acknowledged the crime, was convicted on his confession, and condemned to the gallows. Two years afterwards the return of the widow woman, not only alive, but without having received so much as a wound, proved the innocence of this unhappy man.'

Not unlike this is the case of a youth at Amsterdam, who, after a murder had taken place in the night, was found in a state of intoxication stretched upon the bench of a tavern, with a bloody knife rolled up and concealed in his clothes. He was apprehended, subjected on this evidence to torture, and persuading himself that in his drunkenness he had unconsiously committed the act, he confessed the crime, and was condemned to death. Afterwards the real perpetrator being arrested for some other crimes, declared himself to be the guilty person.'

Heineccius in a treatise 'upon the duty of judges in respect to the confessions of criminals,' tells us of one, 'who, unsuspected of any crime, voluntarily confessed that he had formed a league with an evil spirit. Being, consequently, in the year 1695, summoned before the tribunals, not only did he avow that league, but accused himself of the most horrible crimes committed in company with his master. He declared that transforming himself into various shapes, he had murdered men, robbed dwellings, and perpetrated other enormities. He said, that in the form of an apple, he had been thrown by his master through the window into a dwelling-house, and there had either torn in pieces the inhabitants

* Cens. For par. 2, lib. ii. cap. 7.

who ate of the apple, or by the part which they had left being suddenly changed to flesh before their eyes, had so terrified them, that they soon after died of the fright. He added, that sometimes taking the shape of a bird, he had snatched infants from their cradles, and plundered houses, and at last, when he was tired of doing mischief, had lain safe in his master's ear, who meanwhile had turned himself into an ass. He told numberless other stories, equally absurd, which may be passed over. But when the magistrate of the county, where this second Proteus declared that he had slain so many men, carried away so many children, and committed so many thefts, was directed to inquire more carefully whether such things had really happened, the whole vanished into smoke, and this self accused thief declared, that he had had no other object, than by this daring falsehood to gain celebrity to his name.'

The same author adds another example, which is more immediately to our purpose. 'In one of the villages of Friesland a woman died suddenly, and common fame cast upon her husband the suspicion of having poisoned her. He was imprisoned, and voluntarily confessed, that he had given to his wife poison, which he bought of an apothecary at Dockum mixed with a cake; that immediately after taking it, she complained of being ill, and after a fruitless attempt to produce vomiting, expired in great pain about four o'clock in the morning. He added various circumstances attending the crime, and among them, that he had buried a part of the poison, wrapped in paper and tied with thread, in a field adjoining his house, and covered the place with green turf. Yet, when the circumstances were carefully inquired into, all or most of his representations were found to be false. The physicians found no marks of poison in the body, none was bought of the apothecary named by the accused, nor could any remains of the poison be found in the field, though the man himself was carried into it, and examined almost every sod.'

Examples of this sort abundantly justify the humane caution of the civil law, in regarding the confession of the criminal as insufficient of itself to authorize a capital conviction. The common law admits the confession in evidence, if made freely, and in such manner that there can be no suspicion of the party's having been induced by persuasions, promises,

or threats. It may still be contradicted, and, as in the civil law, 'tantum præsumptio vel gravior vel livior pro circumstantiarum varietate contra confitentem nascitur, revocarique potest usque ad litem contestatam.' But the condition before mentioned should always be strictly required, before condemnation is passed; namely, that the fact itself, which is the substance of the crime, should satisfactorily be proved. In the Jewish law, the confession of the accused was considered as equivalent to the testimony of two witnesses, required in other cases. Thus Joshua condemned Achan upon his confession, but not before he had sent messengers to Achan's tent to ascertain the truth of his confession in respect to the embezzled spoils,—'and behold, it was hid in his tent, and the silver under it.'* So when David said to the Amalekite youth, 'thy blood be upon thy head; for thy mouth hath testified against thee,'† it was certain, that Saul had been slain.

Justice Foster‡ contends strongly against the admission of any confession in evidence, unless 'made during the solemnity of an examination before a magistrate, or person having authority to take it; when the party may be presumed to be properly upon his guard, and apprized of the danger he standeth in.'—'For,' he adds, 'hasty confessions, made to persons having no authority to examine, are the weakest and most suspicious of all evidence. Proof may be too easily procured, words are often misreported, whether through ignorance, inattention, or malice, it mattereth not to the defendant; he is equally affected in either case; and they are extremely liable to misconstruction; and withal the evidence is not, in the ordinary course of things, to be disproved by that sort of negative evidence, by which the proof of plain facts may be and often is confronted.'

It would be difficult to answer this reasoning; and it ought at least to prevail so far, as to induce the tribunals where criminal justice is dispensed, to be on their guard against that dangerous error, which inclines us to construe whatever admissions the accused may have made, most strongly against himself; and in some measure to triumph in his self-condemnation. Let them be careful how they exclaim upon such occasions, 'what need have we of any further witness?'

* Josh. vii. 22. † 2 Sam. i. 16. ‡ Disc. of High Treason, ch. 3.

But it would be hardly less unfortunate, if examples like that of Russell Colvin should produce hesitation and timidity, instead of caution. When properly considered, this case is far from furnishing any good reason for doubting conclusions founded on the long established rules of evidence, applied deliberately, and with the desire rather to acquit, than to condemn.

ORIGINAL MISCELLANY.

[We take pleasure in the opportunity of laying before our readers the following extract from the journal, kept by a friend in a tour through Greece last summer. Our readers, who are acquainted with the books of the travellers in Greece, will see that most of the statistical details contained in this extract are derived from original sources and personal inquiry on the spot. We are also happy in being able to announce, that a work on the statistics of Italy, composed from very ample original materials, collected in the years 1818 and 1819 in that country, will appear in the course of the ensuing season, from the author of the following article.]

VISIT TO JOANNINA AND ALI PASHA.

Corfu, April 8, 1819.

The boat, which was to take us over to the Albanian coast, was rowed by four men dressed in the Greek dress. The pilot was a Neapolitan, who spoke English and French. He had been in the service of Murat, but was taken prisoner at the time of his overthrow, and had been suffered to have his liberty, only on conditon of leaving the kingdom of Naples forever. He had been in St. Domingo, Philadelphia, New York, and Boston; and he was now employed by the government of the Ionian Isles. But one needs not come as far as the sea in which the island of Ulysses stands, to find men of all countries, condemned to long and wide wanderings on the earth, and consuming among strangers, far from their homes, an uncertain and wearisome existence. Indeed, it is given to very few to repose under the shade of their own beech-tree, and cause the woods to resound with the name of the beautiful Amaryllis. M. de Chateaubriand found, in a convent at Bethlehem, a poor monk from Brittany in France. This unhappy man said to him, 'who now remembers me in my